

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Business Cell Systems)	File Number EB-02-AT-415
Owner of Antenna Structure #1216842 near Tellico)	NAL/Acct. No. 200332480015
Plains, Tennessee)	FRN: 0005-8658-60
Athens, Tennessee)	

FORFEITURE ORDER

Adopted: July 23, 2004

Released: July 27, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Business Cell Systems (“*Business Cell*”), owner of antenna structure #1216842, for willful and repeated violation of Section 17.51(b) of the Commission’s Rules (“*Rules*”).¹ The noted violation involves failure to continuously exhibit all medium intensity obstruction lighting during daylight hours.

2. On January 23, 2003, the Commission’s Atlanta Field Office (“*Atlanta Office*”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Business Cell in the amount of ten thousand dollars (\$10,000).² Business Cell filed a response on February 4, 2003.

II. BACKGROUND

3. On November 19 and 21, 2002, in response to a complaint of an unlit tower, an agent of the Atlanta Office inspected the antenna structure associated with FCC antenna structure registration (“*ASR*”) #1216842 located near Tellico Plains, Tennessee. At the times of inspection, 9:30 a.m. on November 19, 2002, and 2:30 p.m. on November 21, 2002, the unpainted structure had no white obstruction lighting in operation.

4. On November 21, 2002, an agent of the Atlanta Office determined from the Commission ASR database that antenna structure #1216842 was registered to Business Cell and that the registration included requirements to maintain medium intensity obstruction lighting during daytime and nighttime hours. The FCC agent telephoned the nearest Flight Service Station of the Federal Aviation Administration (“*FAA*”), which verified that it had received no report of a light outage for this antenna structure.

¹ 47 C.F.R. § 17.51(b).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480015 (Enf. Bur., Atlanta Office, released January 23, 2003).

5. On December 4, 2002, the agent of the Atlanta Office contacted Business Cell via telephone. Business Cell's owner indicated that he was unaware of the outage. Upon notification by the FCC, the structure was inspected on December 4 by Business Cell to confirm the lighting outage. Business Cell states that its inspection revealed that the control board in the strobe control pack and the alarm relay had been blown apart, which prevented the strobes from working and also prevented an alarm from being sent to notify the alarm center of the outage.

6. In its response to the *NAL*, Business Cell does not challenge the finding of the *NAL* and admits that no medium intensity obstruction lighting was operating at the time of inspection. Business Cell appears to deny that it willfully violated Section 17.51(b) of the Rules, claiming the lighting outage was caused by an "act of God" outside its control. Business Cell also states that it took a number of post-Commission inspection repair actions and also seeks forbearance by generally requesting that the Commission give it "any help you can give on this matter."

7. Further, Business Cell describes in detail the alarm system it uses to monitor for light outages. Business Cell indicates that its system monitors the lights and sends an alarm using cell radio technology. Additionally, Business Cell states that if an alarm system failed to check in once every 24 hours it would be notified.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining Business Cell's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

9. Section 17.51(b) of the Rules requires that all medium intensity obstruction lighting be exhibited continuously unless otherwise specified. Business Cell's antenna structure #1216842 is required to exhibit medium intensity obstruction lighting during daylight hours and at night. At the times of inspection on November 19 and 21, 2002, no medium intensity obstruction lighting was observed operating on Business Cell's antenna structure #1216842. Business Cell had not notified the FAA of the light outage.⁷

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ The owner of any registered antenna structure must report immediately to the nearest flight service station of the FAA any observed or otherwise known extinguishment or improper functioning of any flashing obstruction light not corrected within 30 minutes. *See* 47 C.F.R. § 17.48(a).

Additionally, the owner of Business Cell states that he was unaware that the strobes were not operating until December 4, 2002, when the FCC agent contacted him.

10. The owner of Business Cell does not dispute that he did not know that the medium intensity obstruction lights were not operational from at least November 19, 2002, until December 4, 2002 when the FCC agent notified him. Business Cell argues, however, that the lighting outage was the result of a “lightning strike that was unbelievable” and implies that an “act of God” should be a mitigating fact warranting reduction or rescission of the forfeiture and that the violation was not willful.

11. Section 17.47 of the Rules⁸ requires that the owner of an antenna structure observe the antenna structure’s lights at least once every 24 hours, either visually or by observing an automatic properly maintained indicator designed to register any failure of the lights. Alternatively, the owner may use an automatic alarm system that is properly maintained and designed to detect any failure of the lights and to provide indication of such failure to the owner. Business Cell states that it used an automatic alarm system to monitor the lighting on its towers and that the system is designed to use a cellular radio system to relay a message to it if the lights failed. Additionally, Business Cell states that the system would notify it if the unit did not check in with the cell system within 24 hours. Business Cell does not explain, however, why in this instance it was not notified that the alarm system had failed for more than two weeks after the lights were out. In fact, the President of Business Cell states that the first indication he received that the lights were not operational was when the FCC agent contacted him. Nor does Business Cell provide any evidence that it properly maintained its automatic alarm system since installing it. Accordingly, it does not appear, based on the record before us, that Business Cell had properly inspected or maintained the automatic alarm system prior to the FCC notification as required by Section 17.47. Thus, even assuming that the lightning strike caused the outage, we conclude that Business Cell willfully violated the rule.⁹

12. Business Cell states that the tower lighting outage was quickly corrected once it was informed of it because of the Commission inspection. Business Cell’s remedial actions to correct the problem subsequent to notification of the violation do not mitigate the violation.¹⁰ It is well established that “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹¹

13. Business Cell also states that this is the first time its system has not been in compliance with the Commission’s Rules. To the extent this constitutes a claim for overall compliance, our review of the Commission’s records confirms that Business Cell has not previously been found to have violated the Rules.

14. Based on the evidence before us, we find Business Cell willfully¹² and repeatedly¹³ violated

⁸ 47 C.F.R. § 17.47.

⁹ See *Professional Communications, Inc.*, DA 04-1600, EB-02-KC-806 (Enf. Bur. 2004).

¹⁰ See *Radio Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973); *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002).

¹¹ *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

¹² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or

Section 17.51(b) of the Rules by failing to continuously exhibit medium intensity obstruction lighting during daylight hours. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted because of the compliance record of Business Cell with the Commission's Rules. Accordingly, the forfeiture amount is reduced from ten thousand dollars (\$10,000) to eight thousand dollars (\$8,000).

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act¹⁴, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules¹⁵, Business Cell, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for its willful and repeated violation of Section 17.51(b) of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules¹⁶ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332480015, and FRN: 0005-8658-60 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶ 47 C.F.R. § 1.80.

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.

17. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, and First Class Mail to Business Cell Systems, P.O. Box 1374, Athens, TN 37371.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau